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10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 STATE OF CALIFORNIA, *et al.*,

13  
14 Plaintiffs,

15 v.

16 ANDREW R. WHEELER, as the  
17 Administrator of the United States  
Environmental Protection Agency, *et al.*,

18  
19 Defendants,

20 and

21 STATE OF GEORGIA, *et al.*,

22  
23 Defendant-Intervenors.

Case No. 3:20-cv-03005-RS

**ORDER**  
**STIPULATED MOTION TO AMEND**  
**CASE MANAGEMENT STATEMENT**

Complaint Filed: May 1, 2020

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Pursuant to Local Rule 7-12, Plaintiffs<sup>1</sup>, Defendants<sup>2</sup>, and State Intervenor-Defendants<sup>3</sup> (collectively, the “Parties”) stipulate to amend Section 17.A of their joint case management statement, which provides a production schedule for documents in the Administrative Record that Defendants assert are subject to copyright, Dkt. No. 207 at 7-8 (Section 17.A), and replace it with the schedule set forth on page 2 below. Accordingly, the Parties respectfully request that the Court amend its order granting the proposed production schedule, Dkt. No. 208 (adopting the Parties’ agreed upon document production schedule in its entirety) to reflect the Parties’ agreement.

The Parties have good cause in stipulating to this amendment. Defendants have agreed not to seek a protective order governing the provision and use of copyrighted documents in the Administrative Record and the Parties will not be filing a proposed protective order with the Court. Indeed, copyrighted documents exchanged in the course of litigation and used solely for that litigation are considered “fair use.” *See, e.g., Stern v. Does*, 978 F. Supp. 2d 1031, 1047 (C.D. Cal. 2011), *aff’d sub nom. Stern v. Weinstein*, 512 F. App’x 701 (9th Cir. 2013) (“Reproduction of copyrighted material for use in litigation or potential litigation is generally fair use, even if the material is copied in whole.”). In lieu of a protective order, Defendants will produce copyrighted documents with limiting instructions.

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<sup>1</sup> Plaintiffs are the States of California, New York, Connecticut, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington and Wisconsin, the Commonwealths of Massachusetts and Virginia, the North Carolina Department of Environmental Quality, the District of Columbia, and the City of New York.

<sup>2</sup> Defendants are the United States Environmental Protection Agency (EPA), EPA Administrator Andrew Wheeler, the United States Army Corps of Engineers (Army Corps), and Assistant Secretary of the Army for Civil Works R.D. James.

<sup>3</sup> State Intervenor-Defendants are the States of Georgia, West Virginia, Alabama, Alaska, Arkansas, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming.

Accordingly, the Parties have agreed to the following revision to Section 17.A of the case management statement (Dkt. No. 207 at 7-8):

A. The Parties' Proposed Schedule Regarding Production of All Documents in the Administrative Record for the 2020 Rule

The Parties discussed the production of the documents in the administrative record that Defendants assert are copyrighted and/or are physical files that are part of the administrative record but are not accessible on the docket for the 2020 Rule at regulations.gov and have not been produced, and were able to agree as follows:

Deadline	Action
September 17, 2020	Defendants will provide Plaintiffs and State Intervenor with electronic copies of the physical files that are part of the administrative record and are not subject to copyright but are in a file size/format that is not accessible on regulations.gov. Defendants shall make these documents available to the Court and will do so pursuant to the Court's future instructions regarding its preferred manner for receipt of the administrative record.
October 1, 2020	Defendants will provide Plaintiffs and State Intervenor access to electronic copies of every document in the administrative record, including copyrighted documents with limiting instructions. Defendants shall make these documents available to the Court and will do so pursuant to the Court's future instructions regarding its preferred manner for receipt of the administrative record.

Respectfully submitted,

DATED: September 24, 2020

/s/ Hubert T. Lee

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1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2  
3 DATED: September 24, 2020



4 United States District Judge Richard Seeborg